

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

In re: § CASE NO. 19-50292-CAG-11
§
CLEARWATER TRANSPORTATION, LTD., § Chapter 11
§
DEBTOR §

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS' RESPONSE IN SUPPORT OF
MOTION FOR APPOINTMENT OF TRUSTEE, OR IN THE ALTERNATIVE,
MOTION FOR APPOINTMENT OF AN EXAMINER

The Texas Comptroller of Public Accounts ("Comptroller"), appearing through the Texas Attorney General's Office, responds in support of the *Motion for Appointment of Trustee, or in the Alternative for Appointment of Examiner* ("Motion") [Doc. No. 51], and would respectfully show the following:

1. Debtor filed its voluntary petition for relief under Chapter 11 on February 7, 2019 (the "Petition Date"). On the Petition Date, Debtor was liable for Texas motor vehicle rental tax ("MVRT") incurred from October 1, 2018 through February 7, 2019. Debtor owes \$213,010.77 in MVRT for the period October 1, 2018 through January 31, 2019. Debtor's February 2019 MVRT return is due on March 20, 2019.

2. Debtor operates a car rental business. In its operations, Debtor is required to collect MVRT from its customers and is required to remit the collected tax to the Comptroller monthly. Tex. Tax Code § 152.026 and 151.045. The collected tax is held in trust for the Comptroller under Texas Tax Code § 111.016(a), which provides:

Any person who receives or collects a tax or any money represented to be a tax from another person holds the amount so collected in trust for the benefit of the state and is liable to the state for the full amount collected plus any accrued penalties and interest on the amount collected.

3. The trust funds cannot be used lawfully by Debtor in its business operations.

Debtor's use of the MVRT tax collections without payment to the Comptroller constitutes a breach of fiduciary duty, a misappropriation of fiduciary property and conversion. *Davis v. State*, 904 S.W.2d 946 (Tex. App. - Austin 1995); *Dixon v. State*, 808 S.W.2d 721 (Tex. App. - Austin 1991, writ dism'd w.o.j.).

4. Based on Debtor's apparent pre-petition use of trust fund taxes to operate its business, and for the reasons stated in the Motion, the Comptroller supports the Motion filed by Austin Conrac, LLC and the City of Austin.

WHEREFORE, the Texas Comptroller of Public Accounts respectfully requests the Court appoint a Chapter 11 trustee or, in the alternative, appoint an examiner.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 18, 2019, a true copy of the foregoing was served by the method and to the following parties as indicated:

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